though the non-user extended for a period of twenty-one years, during which time a parallel location was used by the railroad, this was not sufficient to show abandonment.

EVIDENCE.—PHYSICAL EXAMINATION OF PLAINTIFF IN PERSONAL INJURY CASES.—The plaintiff sued for personal injuries received while in the employ of the defendant. At the trial he voluntarily exhibited his injured leg to the jury, whereupon the defendant requested that its physician be allowed to examine the injured member. This the court refused to do. *Held,* not to be error, that the mere exhibit of the plaintiff's person to the jury did not give the defendant the right to compel the plaintiff to submit to an examination of his leg. *Wheeler* v. *Chicago & W. I. R. Co.* (Ill. 1915) 108 N. E. 330.

Had the plaintiff not exhibited his injured leg to the jury the refusal of the court to compel him to submit to a physical examination would have presented a question upon which the decisions are in hopeless conflict. The weight of authority allows such an examination on the ground that substantial justice requires it, and its refusal encourages perjury and assists in fraudulent and unjust recoveries. *Wanek* v. *Winona,* 78 Minn, 98; *Graves* v. *Battle Creek,* 95 Mich. 266; *Fullerton* v. *Fordyce,* 121 Mo. 1; *Savannah Ry. Co.* v. *Wainwright,* 99 Ga. 255; *Alabama Ry. Co.* v. *Hill,* 90 Ala. 71; *White* v. *Milwaukee Ry Co.,* 61 Wis. 536; *Lane* v. *Spokane Falls Ry. Co.,* 21 Wash. 119. The following refuse to compel an examination on the ground of the inviolability and sacredness of one's person, and his right to possess and control the same "free from all restraint or interference of others." *Union Pacific Ry. Co.* v. *Botsford,* 141 U. S. 250; *Stack* v. *N. Y., N. H. & H. R. Ry. Co.,* 177 Mass. 155; *Parker* v. *Enslow,* 102 Ill. 272; *Peoria Ry. Co.* v. *Rice,* 144 Ill. 227; *McQuigan* v. *Delaware Ry Co.,* 129 N. Y. 50; *International & Great Northern Ry. Co.* v. *Butcher,* (Tex. 1904) 81 S. W. 819; *Galveston Ry. Co.* v. *Sherwood,* (Tex. 1902) 67 S. W. 776. For a full discussion and review of cases on this point see 1 MICH. LAW REV. 193, 277. But where, as in the principal case, the plaintiff voluntarily exhibits his person to the jury it would seem that he thereby waives his privilege to object to a physical examination, and evidence thus put into the case should, like other exhibits in evidence, be open to attack and examination by the opponent. It has been so held where the right to compel a physical examination exists. *Haynes* v. *Trenton,* 123 Mo. 326; *Louisville Ry. Co.* v. *Simpson,* 111 Ky. 754. Also where the court is powerless in the first instance to compel the physical examination. *Winner* v. *Lathrop,* 22 N. Y. Supp. 516; *Houston & Texas Ry Co.* v. *Anglin,* (Tex. 1905) 89 S. W. 966; *Chicago, R. I. & T. Ry. Co.* v. *Langston,* 19 Tex. Civ. App. 568. The Illinois court in the principal case, without citing any authority for its position, refuses to take this step, but takes the view that since the plaintiff was willing to be examined by a physician who had diagnosed and treated him for a fracture of the kneecap for some time after the injury, the refusal of the trial court to grant the defendant's request was not erroneous.

EVIDENCE.—EXPERT TESTIMONY BASED ON LAW OF MATHEMATICAL PROBABILITIES.—Defendant was tried for forging an affidavit by inserting therein

certain typewritten words. To prove the alteration was made on defendant's typewriter specimens of typewriting made on his machine were introduced in evidence. Experts upon comparing the disputed writing with one of these standards of comparison pointed out thirteen defects and peculiarities which were common to both. The plaintiff then called a university professor of mathematics and asked him to state according to the law of mathematical probabilities the chance or probability of these defects being reproduced on any other typewriter than the defendant's. He testified the chance was one in 4,000,000,000. *Held* (SEABURY, J., dissenting) that this was reversible error, that the statement was not based on observed data and was purely speculative. *People* v. *Risley* (N. Y. 1915) 108 N. E. 200.

Whether a witness offered as an expert has the knowledge and experience necessary to qualify him to give an opinion, where opinion is admissible, is in the first instance a question for the court. *Sarle* v. *Arnold,* 7 R. I. 582; *Dole* v. *Johnson,* 50 N. H. 452. And since the function of the expert is to reason for the jury in matters which they do not understand, his services are unnecessary where the facts can be fully placed before the jury and are understood by them. In such cases the court will not allow the expert to usurp the functions of the jury. *Koccis* v. *State,* 56 N. J. L. 44; *Bouthet* v. *International Paper Co.,* 75 N. H. 581; CHAMBERLAYNE, EVIDENCE, § 2377. Nor is an expert necessary where it appears that his opinion enters the field of conjecture and speculation, for the judgment of an expert must be more than a mere quess. *Anonymous,* 37 Miss. 54, 58; *Duckworth* v. *Watsonville Water & Light Co.,* 158 Cal. 206; *McKeone* v. *Barnes,* 108 Mass. 344; *Lewis* v. *Bell,* 109 Mich. 189; *Michaud* v. *Grace,* 122 Mich. 305. The admissibility of evidence based on the law of mathematical probabilities does not appear to have been ever before directly ruled on. In the *Howland Will Case* reported in 4 AMER. LAW REV. 625, such evidence was permitted but no review of its admissibility was had, the case having been disposed of on another point. *Robinson* v. *Mandell,* Fed. Cases No. 11959, 3 Cliff. 169. The soundness of excluding evidence of probability which is not based on observed data does not seem open to question. Certainly the life and liberty of a person ought not to be subjected to the speculative opinion of experts, especially since, as stated by WHARTON, "It is very curious how often the most acute and powerful intellects have gone astray in the calculations of probabilities." WHART. CR. EV. (10th ed.) 21.

FACTORS.—BAILOR'S RIGHT TO RECLAIM PROPERTY.—X Company was a factor selling pianos for Y Manufacturing Company under a contract to that effect. The plaintiff as receiver of Y Manufacturing Company, sent a carload of pianos to X Company, according to the contract. X Company gave a bill of sale of them to one of its creditors to secure a pre-existing debt. This creditor sold them to defendant company, a bona fide purchaser for value. Plaintiff brought action to recover these pianos from defendant. *Held,* that defendant's vendor had no title so could transfer none to defendant. *Norris* v. *Boston Music Co.,* (Minn. 1915) 151 N. W. 971.

The general rule is that in the absence of statute, a principal who is not